

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

M. DIANE KOKEN, AS LIQUIDATOR	)	
ON BEHALF OF RELIANCE INS. CO.	)	
(IN LIQUIDATION),	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	Civil No. 02-83-B-C
	)	
AUBURN MANUFACTURING, INC.,	)	
ET AL.,	)	
	)	
Defendants.	)	
_____	)	

**ORDER ON APPELLATE REVIEW OF THE MAGISTRATE  
JUDGE’S ORDER (DOCKET ITEM NO. 283) ON AUBURN  
MANUFACTURING, INC.’S MOTION FOR SANCTIONS  
(DOCKET ITEM NO. 169) AND MOTION TO EXCLUDE AND  
STRIKE (DOCKET ITEM NO. 253)**

Before the Court on Appellate Review pursuant to 28 U.S.C. § 636(b)(1)(A) is the Magistrate Judge’s Order (Docket Item No. 283) on two Motions of Defendant Auburn Manufacturing, Inc. (Docket Item Nos. 169 and 181).

By the Order acting on the Motions, the Magistrate Judge denied the Motion for Sanctions because, after articulating her findings and concerns generated by the Motion, as she so nicely put it, “I do not think that this case presents the appropriate vehicle to impose monetary sanctions for failure to comply with Rule 26.” Order on Motions (Docket Item No. 283) at 2.

Acting on Docket Item No. 181, the Magistrate Judge declined to strike the expert testimony of Black & Veatch witnesses Hoffman and Glover. After stating her factual

predicate for her refusal to strike the testimony, she found that Auburn's Motion "loses the wind for its sails," *id.* at 3, because of disclosed fact testimony sufficient to provide an adequate foundation for the expert testimony that was the subject of the Motion.

"Objections" (not Notices of Appeal as required by 28 U.S.C. § 636(b)(1)(A); Jacobsen v. Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C., 594 F. Supp. 583, 585 (D. Me. 1984) have been filed by movant Auburn Manufacturing, Inc. (Docket Item No. 286) and by Inpro, Inc. who joined the Motion (Docket Item No. 285). Responses to the Objections have been filed by Black & Veatch, Inc. (Docket Item Nos. 291 and 292).

Having carefully reviewed the written submissions in the context of appellate review pursuant to § 636(b)(1)(A) and the record made on the Motions before the Magistrate Judge, the Court **FINDS** that her actions for the reasons stated by her are clearly well within the ambit of her judicial discretion in deciding each of the Motions and that the Defendants have failed to demonstrate any clear error in those rulings.

The Appeal is herewith **DENIED**, and the action of the Magistrate Judge is hereby **AFFIRMED**.

**SO ORDERED.**

/s/Gene Carter \_\_\_\_\_  
GENE CARTER  
Senior District Court Judge

Dated at Portland, Maine this 15th day of October, 2004.

**Plaintiff**

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-

**M DIANE KOKEN, as  
Liquidator on behalf of  
Reliance Insurance**

represented **ANTHONY R. ZELLE**  
by ROBINSON & COLE  
ONE BOSTON PLACE

*Company (in  
liquidation)*

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V.

**Defendant**

-----  
**PYRO SHIELD INC**

*TERMINATED: 11/04/2002*

**REDCO/O'CONNOR INC**

*TERMINATED: 08/05/2002*

**BLACK & VEATCH  
CONSTRUCTION, INC**

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*dba*  
REDCO/O'CONNOR

**ThirdParty Plaintiff**  
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*ATTORNEY TO BE NOTICED*

**MICHAEL C. CASTELLON**  
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*ATTORNEY TO BE NOTICED*

V.

**ThirdParty Defendant**  
-----

**PYRO SHIELD INC**  
*TERMINATED: 03/27/2003*

**Cross Claimant**  
-----

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V.

**Cross Defendant**

-----

**PYRO SHIELD INC**  
TERMINATED: 11/19/2002

**Cross Claimant**

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**PATRICIA A. HAFENER**  
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*TERMINATED: 04/28/2004*  
*ATTORNEY TO BE NOTICED*

V.

**Cross Defendant**

-----  
**PYRO SHIELD INC**  
*TERMINATED: 11/19/2002*

**REDCO INC**  
*TERMINATED: 09/11/2002*

*dba*  
**REDCO/O'CONNOR**

**Defendant**

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**Cross Claimant**

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**PATRICIA A. HAFENER**

(See above for address)

TERMINATED: 04/28/2004

ATTORNEY TO BE NOTICED

V.

Cross Defendant

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AUBURN MANUFACTURING  
INC

INPRO INC

Cross Claimant

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AUBURN MANUFACTURING  
INC

V.

Cross Defendant

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BLACK & VEATCH

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INPRO INC

O'CONNOR CONSTRUCTORS  
INC

REDCO INC

Cross Claimant

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O'CONNOR CONSTRUCTORS  
INC

V.

Cross Defendant

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AUBURN MANUFACTURING  
INC

Cross Claimant

-----

REDCO INC

V.

Cross Defendant

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AUBURN MANUFACTURING  
INC

Cross Claimant

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REDCO INC

V.

Cross Defendant

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INPRO INC

Cross Claimant

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INPRO INC

V.

Cross Defendant

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AUBURN MANUFACTURING  
INC

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O'CONNOR CONSTRUCTORS  
INC

REDCO INC

REDCO/O'CONNOR INC

Cross Claimant  
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INPRO INC

V.

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INC

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REDCO/O'CONNOR INC

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O'CONNOR CONSTRUCTORS  
INC

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